

# DRAFT

## LICENSING SUB-COMMITTEE

### MINUTES OF THE MEETING HELD ON THURSDAY, 18 MAY 2017

**Councillors Present:** Peter Argyle, Jeff Beck and Graham Bridgman (*Chairman*)

**Substitute:** Councillor Paul Bryant

**Also Present:** Anne Marie Baird (Solicitor), Emilia Matheou (Environmental Health & Licensing) and Moira Fraser (Democratic and Electoral Services Manager)

#### PART I

##### 1 **Declarations of Interest**

The Chairman requested that it be noted for the record that all Councillors on the Panel knew Councillor Richard Crumly who was representing Thatcham Town Council.

There were no declarations of interest received.

The Applicant sought clarification that the objectors would only be commenting on the matters they had raised as part of their written objection

##### 2 **Application No. 17/00400/LQN - Domino's Pizza, 3 London Road, Thatcham, RG18 4GE**

The Sub-Committee considered a report (Agenda Item 2(1)) concerning Licensing Application 17/00400/LQN in respect of a premise licence for Dominos Pizza, 3 London Road, Thatcham, RG18 4GE.

In accordance with the Council's Constitution, Emilia Matheou (Licensing Officer, West Berkshire Council), Messrs Knut Wilberg and Christopher Grunert (Applicants) and Councillor Richard Crumly and Mr Andrew Moss (Objectors) addressed the Sub-Committee on this application.

Ms Matheou, in addressing the Sub-Committee, raised the following points:

- West Berkshire Council Licensing received an application made under S17 of Licensing Act 2003 for a premises licence to be granted for 3 London Road, Thatcham RG18 4GE and the application was accepted on 30 March 2017.
- The responsible authorities, Parish and Ward Councillors and Members were served with a copy of the application by email on 3 April 2017.
- The applicants were seeking a Premises Licence to be granted for the licensable activities of the supply of alcohol and late night refreshment. The application for the sale of alcohol was from 10:00 to 02:00 seven days a week for both on and off site consumption. The sale of alcohol had to be ancillary to a food order.
- The application for late night refreshment was for collection, consumption on the premises or for delivery of hot food from 23:00 to 02:00 seven days a week.
- In addition they were requesting that in the morning that British Summertime came into being they could trade until 03:00 hours BST.

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- The applicant had advised that the delivery drivers were trained to avoid disturbances outside the premises and on deliveries and therefore proposed the following conditions.
  1. No more than five delivery vehicles to be in use after midnight daily.
  2. Drivers to have a note in vehicle stating “do not slam doors, rev engines or play loud music”
  3. Contact details of the store manager to be displayed.
- The 28 day consultation period ran until the 27 April 2017. The application was advertised in accordance with the regulations with blue notices displayed at the premises (witnessed by officers on 10 April 2017) and by publishing a notice in a local newspaper (Newbury Weekly News) on 6 April 2017.
- During the statutory consultation period the Local Authority received two representations, one from Mr Andrew Moss and the other from Thatcham Town Council. They would be able to expand on their representations when they spoke later at the meeting.
- There were no representations from Responsible Authorities although the Enforcing Authority for Pollution recommended that to promote the prevention of public nuisance the applicant should consider the following conditions.
  1. Prominent, clear and legible notices to be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
  2. Noise from the premises should not unreasonably disturb other people.
  3. Glass drinking vessels should not be placed into receptacles outside the premises between 23:00 hours and 07:00 hours in order to minimise disturbance to nearby properties.
- The applicant had agreed on 21 April 2017 that should the licence be granted the above conditions should be included in the operating plan.
- No formal mediation involving the Council had been undertaken.

Councillor Graham Bridgman asked the Licensing Officer to confirm that West Berkshire Council did not operate a curfew policy, which she did.

Messrs Wilberg and Grunert, in addressing the Sub-Committee, raised the following points:

- Prior to starting his presentation Mr Grunert asked if the Sub-Committee would be willing to allow some photographs of the area, other images of a similar premises, a Sample Driver Policy, an email detailing the compromise reached with Environment Health Officers, observations of West Berkshire Highways and Transport regarding the planning application for proposed change of use, observations of Thatcham Town Council regarding the planning application for proposed change of use and his skeleton argument which he would present verbally. All parties present agreed that the documents could be accepted.

*The meeting was adjourned from 10:14 to 10:19 to allow those present time to look through the documents.*

- Mr Grunert thanked those present for agreeing to the additional documents being circulated at the meeting.

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- Team West operated ten Domino's Pizza outlets and they had a proven record in Newbury where they had operated a franchise for thirty years.
- The application was for a new Domino's Pizza store. The premises had a varied history and had been a Little Chef, cafe and bike shop in the past. He had provided images to set out the context of the area.
- They accepted that there were residential dwelling and two schools nearby. There was a public house on the opposite side of Stoney Lane (which ran down one side of the premises).
- Although the current car park was gated off the photographs illustrated that there was ample off road parking for customers and delivery drivers.
- The photographs of the interior of a store were from the franchisee's store in Bath and served to demonstrate what the inside of the store could look like. The store would require a full refurbishment both internally and externally at a cost of circa £400k.
- It was anticipated that around 75% of trade would be deliveries but that provision would be made for on site consumption. The photographs served to demonstrate that this was a well thought out concept in keeping with the Domino's brand.
- They did not promote their product as a healthy meal but their product was aimed at the family market and was a convenient quality product and tendered as a treat prepared in an expert way.
- The application had two elements. The first being for the supply of late night refreshment and the second for the sale of alcohol as an ancillary product to the food and both elements were for on and off site consumption.
- Currently customers in Thatcham received deliveries emanating from the Newbury store. Opening a store in Thatcham would reduce delivery miles and was unlikely to create a significant increase in the number of vehicle movements.
- There was a delivery code of practice for the drivers to adhere to and a sample document had been provided to the Sub-Committee. The document would be localised to ensure that any issues specific to Thatcham were picked up in it.
- Mr Grunert then discussed the comments on the representations. He noted that there had never been any complaints made about the Newbury store which was also operated by the same franchisee. There had not been issues raised in respect of litter or anti social behaviour and the franchisee had a proven track record.
- He noted that Thatcham Town Council's objection stated that they felt that midnight would be a more appropriate closing time but they had not expanded on the reasons for their request. The Planning Application was submitted requesting a closing time of 02:00 hours. A noise survey was requested as part of that application and the application had been deemed to be acceptable.
- He noted that no objections had been raised by the Highways Team in regard to the Planning Application.
- In terms of the issue of litter it was in the interest of the business to ensure that the locality was kept clean. He also pointed out that 75% of the business was for the delivery of pizza and therefore the packaging would be disposed of by the customers off site.
- He noted that the provision of alcohol would be limited to beer and wine, which would be an ancillary offer to the food. It would not be permissible to purchase alcohol

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without food being purchased. The alcohol would be sold at on site consumption prices.

Councillor Peter Argyle noted the comments in relation to litter and asked how the operator would ensure that the area was kept clean. Mr Wilberg explained that after closing staff would be tasked with collecting all the rubbish. This process happened throughout the day too. He reiterated that the vast majority of the business was for take away food and the customers would therefore be responsible for disposing of the rubbish. He was just as opposed to litter as the objectors as it would result in a bad image for his business.

Councillor Argyle queried if the applicant would be willing to write to neighbouring properties and in so doing provide them with a contact number which they could call if there were any issues. Mr Grunert commented that the businesses telephone number would be widely advertised and that residents would be able to call that number if they had any concerns. It was their intention to integrate with the community and if any issues were raised they would receive the appropriate attention. He stated that Mr Wilberg took a keen interest in his business. Mr Wilberg commented that if the Council was willing to provide contact details for the neighbouring properties he would be willing to write to them.

Councillor Jeff Beck queried if the operating hours accorded with the hours requested in the planning permission. Mr Grunert confirmed that they did.

Councillor Beck queried how the Challenge 25 scheme would be enacted for the delivery of alcohol. Mr Grunert stated that the process that Domino's had adopted exceeded the legal requirements. He explained that when an order for alcohol was placed the caller would be informed that they would have to produce valid identification on delivery. Details of the identification had to be recorded by staff when taking the order and these would be cross checked with the identification produced at the point of delivery to ensure a match. If the recipient refused or failed to produce the identification or if the delivery person was in doubt about the age of the recipient the delivery would be terminated. This would be recorded and a record of the refusal would be kept. Mr Wilberg commented that he was not interested in being targeted by underage drinkers.

Councillor Beck noted that the sale of alcohol had to be ancillary to the sale of food for on site consumption and he queried if the same condition would be applied to the delivery of alcohol. Mr Grunert confirmed that proposed condition on page 17 of the documentation would be applicable to both on and off site consumption.

Councillor Graham Bridgman noted that in the application and in the Code of Conduct reference was made to drivers and he queried what vehicles would be used for delivery. Mr Wilberg stated that most deliveries would be made by cars but that he could not state that mopeds would not ever be used. Mopeds were used for deliveries in Newbury during the day but were not used very often at night.

Councillor Bridgman noted the proposed condition relating to five or fewer delivery vehicles being in use after midnight daily. He queried how many vehicles were routinely required. Mr Wilberg explained that this varied depending on the day of the week and the time of day. The peak period was between 18:00 and 21:30 and more vehicles would be needed during this time. No more than two or three vehicles would be needed after midnight on Monday to Thursday nights.

In response to a query from Members Mr Wilberg explained that the Newbury store was permitted to operate until 5am but they only tended to do so on Fridays and Saturdays. The rest of the week they tended to close at 2am.

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Councillor Bridgman asked if Mr Wilberg could break down the sales categories for his business. He stated that in Newbury 75% of the business was delivery and 25% collection. He hoped that the collection rate would be higher at the Thatcham store.

Councillor Bridgman noted the comments made about traffic generation but commented that Mr Wilberg would surely want to expand his business and not just transfer the Thatcham orders from the Newbury store to Thatcham. Mr Wilberg stated that while of course he would wish to expand his business his delivery costs would be reduced for deliveries in Thatcham.

Councillor Bridgman accepted that the sale of alcohol would be ancillary to the sale of food but commented that it was possible that customers could nominally purchase food in order to obtain an alcoholic drink once the public houses had closed. He noted that there was no mention in the proposed conditions which related to serving inebriated customers.

Mr Grunert responded that it was illegal to serve alcohol to an inebriated customer and it would therefore be repetitive to state any of those conditions in the licence. He noted that supermarkets and petrol stations were permitted to stay open after the public houses closed and that it would be cheaper for the customers to purchase alcohol there. He therefore thought that the probability of this occurring would be fairly limited. Staff would be trained to deal with these situations. It was not the intention to turn the store into a public house or the last stop for customers on the way home. While he acknowledged that there was a correlation between late night food and inebriation the operator had a track record of dealing with these types of issues.

Councillor Richard Crumly queried what licensing hours were in place for the Newbury store and asked why those differed from the application in Thatcham. Mr Grunert stated that the planning permission for the Newbury store differed from that in Thatcham. The Newbury store was permitted to stay open until 5am and had a licence to serve alcohol until 3am, although they opted not to exercise that option. Although the store was permitted to stay open until 5am it did not do so earlier in the week.

Mr Moss commented that he ordered pizzas from Domino's in Newbury but was not aware that he could order alcohol from that store. Mr Grunert explained that while they were permitted to sell alcohol from that store at the moment they had decided not to do so.

Councillor Crumly, in addressing the Sub-Committee, raised the following points:

- He was representing Thatcham Town Council. They had discussed the application at a meeting on the 10 April 2017 and had resolved to request that the premises close at midnight due to its residential location.
- He stated that the Northbrook (Newbury) store was not located in a residential area.
- The Town Council was concerned about customers who might have had a convivial night out, who then stopped in for a carry out pizza on their way home. By its nature the food would take a period of time to prepare. The patrons could then step outside to smoke a cigarette. While doing so they might then disturb the local residents and this could be a recipe for trouble.

Mr Moss, in addressing the Sub-Committee, raised the following points:

- He had moved to his property in Stoney Lane in 1995. The premises had undergone a number of incarnations during that time. It having been a Little Chef, Chinese restaurant and a bike shop and cafe. Each of these uses had presented nuisances to local residents.

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- There was a lot of litter in the area from people getting late night snacks at the petrol station and the nearby road generated a lot of traffic noise.
- He had underlying health issues which were severely exacerbated by a lack of or disrupted sleep.
- The weekends were his time to recover and the prospect of having the premises open until 2am concerned him greatly. The only quiet time he experienced was between midnight and 4am and having the store open until 2am would break into his sleep time. Mr Moss queried how the applicant had arrived at the time of 2am.
- The notices were not prominently displayed and he had only become aware of the application on the closing day for objections.
- He noted that there was a skateboard park opposite the site that was already plagued by litter and he felt that this store could exacerbate this situation.
- He was also concerned about the busy junction and the danger to people crossing the road. The nearby pelican crossing was very loud and the noise would be very disruptive if pedestrians made use of it later in the evening. He commented that it could be heard through his double glazing.
- While he noted that the sale of alcohol was ancillary to the sale of food patrons could misuse the system and order a garlic bread and ten beers. He was of the opinion that some of the establishments that stayed open late at night tended to attract the worst kind of behaviour. He would not object to the opening hours if they mirrored those of the local public house.

Councillor Bridgman commented that if Mr Moss was aware of establishments flouting their licensing conditions he could raise a complaint which could lead to their licences being reviewed. That was one of the purposes of the Licensing Act.

Councillor Beck asked the applicant what arrangements he had put in place for dealing with potentially rowdy customers who might wish to drink their beer outside whilst waiting for their pizza to be prepared. Mr Grunert stated that this statement was pejorative. The applicant had an interest and a contractual obligation in adhering to the requirements of the brand. Where patrons were causing a disturbance the operator would be trained to deal with the situation. Based on experience the number of instances when this occurred were very small.

Mr Wilberg stated that as this particular operating model was new to him he wondered if it would be possible to grant him a temporary licence for six to twelve months to see if any of these issues did arise.

Councillor Bridgman stated that he would take legal advice on this issue but felt that it was unlikely that a temporary licence could be issued in the manner proposed by Mr Wilberg. Councillor Bridgman commented that the issue that the Sub-Committee would have to consider was the impact that the noise emanating from customers and the delivery drivers arriving at and leaving the site in the early hours of the morning would have on the neighbouring properties.

In summing up Mr Grunert stated that he wished to reiterate that Councillor Crumly had said that Thatcham Town Council had objected to the sale of alcohol until 2am and that they did not object to the sale of late night refreshments until that time? Councillor Bridgman corrected him by explaining that the Sub-Committee would have to take the representation as it was written which stated that they objected to both.

Mr Wilberg stated that to overcome the concern about disturbance being generated by patrons drinking outside while they waited for their pizza to be prepared he would accept a condition which set out that no opened alcoholic drinks would be sold with carry out

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meals after 22:00. He would however like to retain the flexibility to put some tables and chairs outside the building before that time so that patrons could sit outside and enjoy their meal.

Mr Grunert stated that his client appreciated the responsibility that came with the granting of a licence. Mr Wilberg's stores had never been subjected to a review before and he did not want the Thatcham store to be the first. Mr Wilberg stated that he and the area manager would be happy to meet with the Town Council and neighbouring residents if that would help with building up a good relationship.

The Sub-Committee retired at 11.27am to make its decision.

Having taken the representations into account, the Licensing Sub-Committee **RESOLVED** that Application 17/00400/LQN be granted, subject to the conditions as in the operating schedule, any relevant mandatory conditions in ss19-21 of the Licensing Act 2003 and the variations set out below.

1. *Supply of Alcohol – permitted hours*

The permitted hours for the sale of alcohol on or off the premises (including by delivery) shall be:

Monday: 10:00 to 24:00  
Tuesday: 10:00 to 24:00  
Wednesday: 10:00 to 24:00  
Thursday: 10:00 to 24:00  
Friday: 10:00 to 02:00 on the next day (Saturday)  
Saturday: 10:00 to 02:00 on the next day (Sunday)  
Sunday: 10:00 to 24:00

REASON: The prevention of public nuisance

2. *Supply of Alcohol – only in conjunction with the supply of food*

The retail sale of alcohol for consumption on or off the premises, or for delivery, shall only be permitted if it is ancillary to an order for food.

REASON: The prevention of public nuisance

3. *Late night refreshment – permitted hours*

The permitted hours for the provision of late night refreshment, whether by sales on or off the premises or by delivery, shall be:

Monday: 23:00 to 24:00  
Tuesday: 23:00 to 24:00  
Wednesday: 23:00 to 24:00  
Thursday: 23:00 to 24:00  
Friday: 23:00 to 02:00 on the next day (Saturday)  
Saturday: 23:00 to 02:00 on the next day (Sunday)  
Sunday: 23:00 to 24:00

REASON: The prevention of public nuisance

4. *Hours premises open to the public*

The premises shall close by no later than 30 minutes after the end of the permitted hours set out in conditions 1 and 3 above.

REASON: The prevention of public nuisance

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5. *Restriction on alcohol sales in open containers*

The sale of alcohol in an open container for consumption off the premises shall not be permitted between 22:00 and the end of the permitted hours set out in condition 1 above.

REASON: The prevention of public nuisance

6. *Training – sales of alcohol, etc*

On commencement of employment, all staff involved in the direct sale of alcohol shall receive documented training regarding the law relating to the sale of age restricted products and any system or procedure they are required to follow during their employment. Training is to be recorded, and refresher training is to be provided to staff on an annual basis.

REASON: the protection of children from harm

7. *Challenge 25 policy*

The Challenge 25 scheme shall be implemented by all sales and delivery staff at the points of taking the order and delivery. The scheme will include the maintenance of refusals records, staff training records and the display of signage at the points of sale.

REASON: the protection of children from harm

8. *Alcohol deliveries*

Staff making deliveries of alcohol will only deliver to adult recipients producing a valid photo ID (for example a passport or photo driving licence or PASS card). Details of the identification shall be recorded by staff when taking an order and cross-checked with the identification produced at the point of delivery to ensure a match. If the recipient refuses to produce appropriate ID, or if the person delivering remains in doubt that the recipient is not 18 years of age or over, or if the identification is suspected of being invalid, delivery must be terminated. A refusals book shall be maintained to record occasions when a delivery was terminated.

REASON: the protection of children from harm

9. *Records to be kept*

A record of the order received shall be completed prior to the dispatch of the alcohol and shall be retained in some legible form at the premise for inspection.

REASON: the protection of children from harm

10. *Glass outside premises*

Glass drinking vessels and/or containers shall not be placed into receptacles outside the premises between 23:00 and 07:00 the following day in order to minimise disturbance to nearby properties.

REASON: The prevention of public nuisance

11. *Number of delivery vehicles*

No more than five delivery vehicles are to be in use between midnight and the end of the permitted hours set out in conditions 1 and 3 above.



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REASON: The prevention of public nuisance and the prevention of crime and disorder

12. *Code of conduct for delivery drivers*

The licence holder shall issue a Code of Conduct to all delivery drivers which they must agree by signature. The Code is to include instructions regarding the delivery of orders and conduct when returning to the premises so as to avoid public nuisance, and that all drivers are to have a note in their car stating "do not slam doors, rev engines or play loud music".

REASON: The prevention of public nuisance

13. *Availability of contact details for complaints, etc*

The name and contact number of the store manager is to be displayed in a position where it can clearly be seen by the public without having to enter the store.

REASON: The prevention of public nuisance and the prevention of crime and disorder

14. *Safety equipment*

The premises shall have adequate safety and firefighting equipment and such equipment shall be maintained in good operational order.

REASON: public safety.

15. *Training - safety*

Staff shall be trained on matters of fire safety, evacuation and use of emergency equipment as required.

REASON: public safety.

16. *Spillages, etc*

Spillages and breakages shall be removed as soon as possible to reduce the risk to patrons and staff.

REASON: public safety.

17. *Means of escape*

Fire Exits and means of escape shall be kept clear and in good operational condition.

REASON: public safety.

18. *Notices*

Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.

REASON: The prevention of public nuisance

19. *Egress of customers*

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Patrons are to be encouraged by staff to leave quietly and respect the interests of the occupiers of any nearby premises. Where appropriate the licensee or a suitable staff member will monitor patrons leaving at closing time.

REASON: The prevention of public nuisance

20. *Noise and vibration*

Noise or vibration shall not emanate from the premises so as to cause a nuisance to nearby properties.

REASON: The prevention of public nuisance

*(The meeting commenced at 10.00 am and closed at 11.27 am)*

**Name** .....

**Date of Signature** .....

**Name** .....

**Date of Signature** .....

**Name** .....

**Date of Signature** .....